

§ 831.908

covered or creditable service properly made as required under 5 U.S.C. 8334(a)(1) or deposited under 5 U.S.C. 8334(c) are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8339(d).

(e) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to a primary or secondary position, the additional withholdings and agency contributions will not be made. While an employee who does hold a primary or secondary position is detailed or temporarily promoted to a position which is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

[58 FR 64367, Dec. 7, 1993, as amended at 60 FR 3339, Jan. 17, 1995]

§ 831.908 Mandatory separation.

(a) The mandatory separation provisions of 5 U.S.C. 8335(b) apply to all law enforcement officers and firefighters in primary and secondary positions. A mandatory separation under section 8335(b) is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter. Section 831.502 provides the procedures for requesting an exemption from mandatory separation.

(b) In the event an employee is separated mandatorily under 5 U.S.C. 8335(b), or is separated for optional retirement under 5 U.S.C. 8336(c), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position which did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart, such separation will be considered erroneous.

[58 FR 64367, Dec. 7, 1993, as amended at 66 FR 38524, July 25, 2001]

§ 831.909 Reemployment.

An employee who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment in any position except a primary position after age 60. Service by a re-employed annuitant is not covered by the provisions of 5 U.S.C. 8336(c).

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§ 831.910 Review of decisions.

(a) The final decision of an agency head or OPM issued to an employee, former employee, or survivor as the result of a request for determination filed under § 831.906 may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of an agency head that a break in service referred to in § 831.904(a)(2) did not begin with an involuntary separation within the meaning of 5 U.S.C. 8336(d)(1) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

[66 FR 38524, July 25, 2001]

§ 831.911 Oversight of coverage determinations.

(a) Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke an agency head's determination that a position is a primary or secondary position, or that an individual's service in any other position is creditable under 5 U.S.C. 8336(c).

(b) Each agency must establish a file containing each coverage determination made by an agency head under § 831.903 and § 831.904, and all background material used in making the determination.

(c) Upon request by OPM, the agency will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, an agency must submit to OPM a list of all covered positions and any other pertinent information requested.

(e) A coverage determination issued by OPM or its predecessor, the Civil Service Commission, will not be reopened by an employing agency, unless the agency head determines that new and material evidence is available that, despite due diligence, was not